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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO.                | CONFIRMATION NO.       |
|---|-------------|-----------------------|------------------------------------|------------------------|
| 10/553,337  | 10/14/2005  | Matthew Robert Cahill | 20051.1USWO                        | 2093                   |
| 52835 7590 08/15/2007<br>HAMRE, SCHUMANN, MUELLER & LARSON, P.C.<br>P.O. BOX 2902<br>MINNEAPOLIS, MN 55402-0902 |             |                       | EXAMINER<br>HYLINSKI, ALYSSA MARIE |                        |
|   |             |                       | ART UNIT<br>3711                   | PAPER NUMBER           |
|   |             |                       | MAIL DATE<br>08/15/2007            | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/553,337

Applicant(s)

CAHILL ET AL.

Examiner

Alyssa M. Hylinski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/11/06</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The information disclosure statement (IDS) submitted on 1/11/06 is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the information disclosure statement is being considered by the examiner.

#### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 8-11, 16-17 and 26-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Bart (3850341). Bart discloses a bottle cap (16) for engaging a bottle (Fig. 4) having a bottle engaging portion (14, 54), a body portion (18), and a bottle cap engaging portion in the form of a female connector (68) for engaging a second bottle cap with the same bottle engaging portion, body portion and bottle cap engaging portion (Fig. 8). The combination of the bottle caps forms a yo-yo body (Fig. 8). The bottle cap engaging portion of the first bottle cap engages the bottle cap engaging portion of the second bottle cap via a connector piece or peg (64) that is separately connectable within the bottle cap engaging portions (Fig. 8). The first bottle cap engaging portion could include the connector piece or peg making it a male connection member that

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could then attach to the female connector piece of the second bottle cap (Fig. 8). A string (74) that connects to the yo-yo body is provided in association with the bottle caps by means of the string being provided within the body portions of the caps (Fig. 8).

Each of the first and second bottle caps can engage a respective bottle and then come together to form a yo-yo body (column 4 line 62-column 5 line 10). With regard to claims 26-27, the examiner notes that the limitation of the bottle caps engaging the bottle indirectly by means of a standard bottle cap already located on the bottle is merely a functional limitation and as such the device need only be capable of performing the function to meet the claim. The bottle engaging portion would be capable of engaging a standard bottle cap since it could be press fit there over.

5. Claims 20, 21 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Dan Elzen (6089945). Van Dan Elzen discloses a yo-yo with two halves (25) connected together (Fig. 1) with at least one of the halves having a removable display piece (30) located on a display portion of the yo-yo half for displaying information (column 3 lines 53-63 and column 4 lines 46-55). The inner surface of the display piece can also be adapted to display information (column 4 lines 40-45). The device is capable of allowing the display piece to be interchangeable with removable display pieces of other yo-yo halves since the display pieces are removable from the device and the display pieces can be used to show a variety of tricks (column 5 lines 26-45).

6. Claims 1 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Olivieri (AU84147/82). Olivieri discloses first and second multi-purpose plugs that can be used as a bottletops (page 7 lines 27-29) having an engaging portion (11), a body

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portion (10) and a bottle cap engaging portion (17) that when connected together via a connector piece (20) form a yo-yo body (Figs. 6-7). The plug can also take the form of a spinning top (Figs. 8-9).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bart. Bart discloses the basic inventive concept, with the exception of the bottle engaging portion having a screw-thread. Bart discloses a can engaging portion of the bottle cap member having either a flexible rim (Fig. 5) or a screw-thread to engage a reciprocal screw-thread on a can (column 4 lines 13-17). It would have been obvious to one of ordinary skill in the art to change the flexible rim bottle engaging portion to a screw-thread engagement portion since these two elements are shown to be art recognized equivalents for attaching a cap or lid to a container.

9. Claims 4-7, 13-15, 18-19, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bart and McLaren (4389802). Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olivieri and McLaren. The references disclose the basic inventive concept, substantially as claimed, with the exception of providing a display portion for advertising means that includes a display piece that can be removably connected thereto and interchanged with other pieces. McLaren

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discloses a cover or lid having an outer surface (Fig. 2) on which can be displayed a removable informational or advertising display piece having information on both sides thereof (Fig. 1, column 4 lines 31-39). It would have been obvious to one of ordinary skill in the art to include a removable informational insert to the device of Bart in order to allow the manufacturer more room for placing pertinent information thereon (column 4 lines 31-39). In regard to the display pieces being interchangeable the examiner notes that such a limitation is merely a functional limitation and as such the device need only be capable of performing the function to meet the claim. The display pieces can be interchangeable since they can be easily removed and reattached to the lid member.

### ***Conclusion***

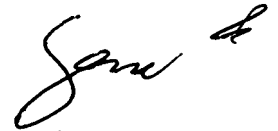
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Hylinski whose telephone number is 571-272-2684. The examiner can normally be reached on M-F (8-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMH



EUGENE KIM  
SUPERVISORY PATENT EXAMINER